

AMENDED IN SENATE SEPTEMBER 2, 2011

AMENDED IN SENATE JULY 12, 2011

AMENDED IN ASSEMBLY MAY 19, 2011

AMENDED IN ASSEMBLY MAY 4, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1389**

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**Introduced by Assembly Member Allen**

February 18, 2011

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An act to amend Section 2814.1 of, and to add Section 2814.3 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1389, as amended, Allen. Vehicles: sobriety checkpoints: impoundment.

Existing law authorizes a city or a county to establish a sobriety checkpoint program in highways under its jurisdiction to check for violations of driving-under-the-influence (DUI) offenses and authorizes the board of supervisors of a county to establish, by ordinance, a combined vehicle inspection and sobriety checkpoint program to check for violations of motor vehicle exhaust standards in addition to DUI offenses.

Existing law authorizes a peace officer, whenever the peace officer determines, among other things, that a person was driving a vehicle (1) without ever having been issued a driver's license, to immediately arrest that person and cause the removal and seizure of his or her vehicle for

an impoundment period of 30 days, or (2) if the person is currently without a valid driver's license, to remove the vehicle for a shorter period of time upon issuance of a notice to appear if the registered owner or the registered owner's agent presents a currently valid driver's license and proof of current vehicle registration, or upon order of the court. *A violation of the Vehicle Code is a crime.*

This bill would authorize the Department of the California Highway Patrol, and a city, county, or city and county, by ordinance or resolution, to establish a sobriety checkpoint program on highways within their respective jurisdictions to identify drivers who are in violation of specified DUI offenses. The bill would require that the program be conducted by the local governmental agency or department with the primary responsibility for traffic law enforcement.

The bill would require that the selection of the site of the checkpoint and the procedures for a checkpoint operation be determined by supervisory law enforcement personnel and that the law enforcement agency employ a neutral methodology for determining which vehicles to stop at the checkpoint or that all vehicles that drive through the checkpoint be stopped. The bill would also require a law enforcement agency to ensure that there are proper lighting, warning signs and signals, and clearly identifiable official vehicles, and uniformed personnel to minimize the risk to motorists and their passengers and to only operate a checkpoint when traffic volume allows for the safe operation of the program.

The bill would delete the county board of ~~supervisors~~ *supervisor's* authority to conduct a combined vehicle inspection and sobriety checkpoint program. The bill would require a law enforcement agency that conducts a sobriety checkpoint program to provide advance notice of the checkpoint's *general* location to the public within a minimum of 48 hours of the checkpoint operation *and would require the law enforcement agency to provide to the public advance notice of the checkpoint's specific location 2 hours prior to the checkpoint operation.*

This bill would require that each motorist stopped be detained so that the law enforcement officer may briefly question the driver ~~and use any legally permitted means to look for specified signs of intoxication as provided.~~ *Because this bill would expand the duties of local law enforcement officials and the scope of an existing DUI checkpoint program, this bill would impose a state-mandated local program. Because the failure to comply with these provisions would constitute*

*an infraction under the Vehicle Code, the bill would also impose a state-mandated local program, by creating a new crime.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.*

*With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2814.1 of the Vehicle Code is amended  
2 to read:

3 2814.1. (a) A board of supervisors of a county may, by  
4 ordinance, establish, on highways under its jurisdiction, a vehicle  
5 inspection checkpoint program to check for violations of Sections  
6 27153 and 27153.5. The program shall be conducted by the local  
7 agency or department with the primary responsibility for traffic  
8 law enforcement.

9 (b) A driver of a motor vehicle shall stop and submit to an  
10 inspection conducted under subdivision (a) when signs and displays  
11 are posted requiring that stop.

12 (c) A county that elects to conduct the program described under  
13 subdivision (a) may fund that program through fine proceeds  
14 deposited with the county under Section 1463.15 of the Penal  
15 Code.

16 SEC. 2. Section 2814.3 is added to the Vehicle Code, to read:

17 2814.3. (a) The Department of the California Highway Patrol  
18 may, and the governing body of a city, county, or city and county  
19 may adopt an ordinance or resolution to, establish, on highways,  
20 roads, or streets under its jurisdiction, a sobriety checkpoint  
21 program to identify drivers who are in violation of Section 23140  
22 or 23152. The program shall be conducted by the local

1 governmental agency or department with the primary responsibility  
2 for traffic law enforcement.

3 (b) The selection of the site of the checkpoint and the procedures  
4 for a checkpoint operation, including, but not limited to, time and  
5 location shall be determined by supervisory law enforcement  
6 personnel.

7 (1) The law enforcement agency that conducts the checkpoint  
8 shall employ a neutral methodology for determining which vehicles  
9 to stop at the checkpoint or may stop all vehicles that drive through  
10 the checkpoint.

11 (2) The law enforcement agency shall ensure that there are  
12 proper lighting, warning signs and signals, and clearly identifiable  
13 official vehicles, and uniformed personnel to minimize the risk to  
14 motorists and their passengers and shall only operate a checkpoint  
15 when traffic volume allows for the safe operation of the program.

16 ~~(3) Each motorist stopped shall be detained so that the officer  
17 may briefly question the driver and use any legally permitted means  
18 to look for signs of intoxication. If the driver does not display signs  
19 of impairment, he or she should be permitted to drive on without  
20 further delay.~~

21 ~~(4) The law enforcement agency shall provide advance notice  
22 of the checkpoint's location to the public at least 48 hours prior to  
23 the checkpoint operation.~~

24 *(3) A motorist stopped shall be detained so that the officer may  
25 briefly question the driver. If the driver does not display objective  
26 signs of impairment, the driver should be permitted to drive on  
27 without further delay unless during the questioning by the officer,  
28 the officer develops reasonable suspicion of a violation of law.  
29 This section does not limit or expand the authority of an officer to  
30 conduct a test for impairment that is otherwise permitted by law.*

31 *(4) The law enforcement agency shall provide advance notice  
32 to the public of the checkpoint's general location at least 48 hours  
33 prior to the checkpoint operation and shall provide advance notice  
34 to the public of the checkpoint's specific location at least two hours  
35 prior to the checkpoint operation.*

36 (5) A driver who does not wish to submit to the checkpoint shall  
37 not raise probable cause or reasonable suspicion by simply making  
38 a legal turn within the confines of the existing traffic laws to avoid  
39 a checkpoint. The location of the checkpoint shall be based on a  
40 location that has a high incidence of arrests under Section 23140

1 or 23152, or a high volume of driving-under-the-influence (DUI)  
2 related accidents, and shall be determined by supervisory officers  
3 of the law enforcement agency conducting the sobriety checkpoint.

4 (6) The time of day and the duration of checkpoints shall be  
5 carefully reviewed and the effectiveness and safety of checkpoints,  
6 as well as motorists' concerns shall be taken into account.

7 (7) The law enforcement agency shall conduct the checkpoint  
8 after dusk or at a time and for a duration that are reasonable and  
9 effective to the objective of deterring DUI offenses.

10 (c) A driver of a motor vehicle who elects to drive through the  
11 checkpoint shall stop and submit to an inspection conducted under  
12 subdivision (a) when signs and displays are posted requiring that  
13 stop.

14 *No reimbursement is required by this act pursuant to Section 6*  
15 *of Article XIII B of the California Constitution for certain costs*  
16 *that may be incurred by a local agency or school district because,*  
17 *in that regard, this act creates a new crime or infraction, eliminates*  
18 *a crime or infraction, or changes the penalty for a crime or*  
19 *infraction, within the meaning of Section 17556 of the Government*  
20 *Code, or changes the definition of a crime within the meaning of*  
21 *Section 6 of Article XIII B of the California Constitution.*

22 *However, if the Commission on State Mandates determines that*  
23 *this act contains other costs mandated by the state, reimbursement*  
24 *to local agencies and school districts for those costs shall be made*  
25 *pursuant to Part 7 (commencing with Section 17500) of Division*  
26 *4 of Title 2 of the Government Code.*